

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

PIASA MOTOR FUELS, INC.,     )  
    Petitioner,                     )  
    v.                                     )     PCB 2018-054  
   )     (LUST Permit Appeal)  
ILLINOIS ENVIRONMENTAL     )  
PROTECTION AGENCY,         )  
    Respondent.                     )

**NOTICE OF FILING AND PROOF OF SERVICE**

TO: Carol Webb, Hearing Officer  
Illinois Pollution Control Board  
1021 N. Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274  
(Carol.Webb@illinois.gov)

Melanie Jarvis  
Division of Legal Counsel  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(Melanie.Jarvis@illinois.gov)

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, MOTION FOR AUTHORIZATION OF PAYMENT OF ATTORNEY'S FEES AS COSTS OF CORRECTIVE ACTION, copies of which are herewith served upon the above persons.

The undersigned hereby certifies that I have served this document by e-mail upon the above persons at the specified e-mail address before 5:00 p.m. on the 20<sup>th</sup> of May, 2020. The number of pages in the e-mail transmission is 11 pages.

PIASA MOTOR FUELS, INC.

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw  
Law Office of Patrick D. Shaw  
80 Bellerive Road  
Springfield, IL 62704  
217-299-8484  
[pdshaw1law@gmail.com](mailto:pdshaw1law@gmail.com)

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

PIASA MOTOR FUELS, INC.,     )  
    Petitioner,                     )  
    v.                                 )     PCB 2018-054  
  )     (LUST Permit Appeal)  
ILLINOIS ENVIRONMENTAL     )  
PROTECTION AGENCY,         )  
    Respondent.                 )

**MOTION FOR AUTHORIZATION OF PAYMENT OF  
ATTORNEY'S FEES AS COSTS OF CORRECTIVE ACTION**

NOW COMES Petitioner, PIASA MOTOR FUELS, INC., by its undersigned counsel, and pursuant to Section 57.8(1) of the Illinois Environmental Protection Act (415 ILCS 5/57.8(1)), petitions the Illinois Pollution Control Board (hereinafter "the Board") for an order authorizing payment of legal costs, and in support thereof states as follows:

1. On April 16, 2020, the Board entered an order, denying the motion to dismiss of the Illinois Environmental Protection Agency (hereinafter "the Agency"), and granting in part and denying in part Petitioner's motion for summary judgment. Piasa Motor Fuels v. IEPA, PCB 18-54 (April 16, 2020).

2. As a result of this order, Petitioner obtained a hearing before the Board on all of the issues raised, and a judgment for \$1,003.12, and an order directing the Agency to recalculate the handling charges in light of the Board's decision.

3. Section 57.8(1) of the Illinois Environmental Protection Act authorizes the Board to reimburse legal fees of parties that prevail on some, but not all issues. Abel Investments, LLC v. IEPA, PCB 16-108, slip op. at 2 (March 2, 2017). The proper time to determine whether a party prevailed as after the decision on the merits. Touchdown Sportswear, Inc. v. Hickory

Point Mall Co., 165 Ill.App.3d 72, 74 (4<sup>th</sup> Dist. 1987).

4. The award of legal costs are discretionary with the Board. Ted Harrison Oil Co. v. IEPA, PCB 99-127 (Oct. 16, 2003). Historically, the Board has initially and fully considered the reasonableness of the claimed legal defense costs before exercising its discretion to authorize their payment. Evergreen FS, v. IEPA, PCB No. 11-51 (Sept. 6, 2012).

5. Attached hereto is the Affidavit of Patrick D. Shaw, documenting the legal costs in this matter, which are \$11,677.40. This affidavit is modeled on previous affidavits utilized by undersigned counsel and found to have been sufficient by the Board. E.g., Prime Location Properties v. IEPA, PCB No. 9-67, at p. 5 (Nov. 5, 2009). It sets forth the legal services provided, the identity of the attorney providing the legal services, and itemization of the time expended for the individual service, and the hourly rate charged. Id.

6. The Board has previously recognized undersigned counsel's experience in underground storage tank appeals. Prime Location Properties v. IEPA, PCB No. 9-67, at p. 6 (Nov. 5, 2009). His billing rate is \$200 per hour, which is believed to be a reasonable rate for environmental attorneys who practice before the Board, and which has been a billing rate approved in previous attorney-fee awards. E.g., Knapp Oil v. IEPA, PCB No. 16-103, at p. 3 (Nov. 17, 2016). All of the legal costs sought herein were incurred "seeking payment under Title XVI and the plain language of Section 57.8(l) of the Act allows for the awarding of legal fees." Illinois Ayers Oil Co. v. IEPA, PCB 03-214, at p. 8 (Aug 5, 2004).

7. The legal issues presented in this appeal arose from the denial of an application for payment for dig-and-haul corrective action and the interpretation of regulations pertaining to soil removal and disposal (35 Ill. Adm. Code § 734.825). As such, the legal work was

inextricably intertwined by common facts and procedural issues. The only discrete issues arose from the Agency's motion to dismiss for lack of jurisdiction, res judicata and collateral estoppel, which the Agency directed to the entirety of the Petition for Review, not differentiating between any claims.

8. While Petitioner did not prevail entirely on all claims before the Board, the ruling clarified that Petitioner has the opportunity to resubmit additional information in "an amended corrective action plan." Piasa Motor Fuels v. IEPA, PCB 18-54, slip op. at 13 (April 16, 2020). Furthermore, the Board's ruling clarifies that disclosure of excavation of backfill from Petitioner's property would be new matter and not subject to issues raised in the motion to dismiss herein. In other words, the Board's ruling does not conclusively hold that Petitioner can never prevail on all issues.

9. A petitioner also need not prevail on all claims in order to be awarded the entirety of its reasonable legal costs, but merely raise "significant issues regarding IEPA's review and determination under the UST program." Abel Investments v. IEPA, PCB 16-108, slip op. at 3 (March 2, 2017). The Agency's erroneous interpretation of the Board's "swell factor" rule was a matter of general applicability imposed whenever soil or backfill is handled. Though this policy does not appear to have been reduced to a guidance document, it is still tantamount to a rule of general applicability, the correction of which provides significant benefit to the future and proper administration of the UST program. Cf. Platolene 500 v. IEPA, PCB 92-9, slip op. at 8 (May 7, 1992) (distinguishing rulemaking from adjudicatory decisions).

10. Accordingly, Petitioner asks the Board to exercise its discretion to award the legal defense costs incurred seeking payment for corrective action under Title XVI.

WHEREFORE, Petitioner, PIASA MOTOR FUELS, INC., requests that the Board authorize payment from the Leaking Underground Storage Tank Fund the amount of \$11,677.40 in attorney's fees and litigation costs pursuant to 415 ILCS 5/57.8(1), and such other and further relief as the Board deems meet and just.

Respectfully submitted,

PIASA MOTOR FUELS, INC.  
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW  
Its attorneys

BY: /s/ Patrick D. Shaw

Patrick D. Shaw  
LAW OFFICE OF PATRICK D. SHAW  
80 Bellerive Road  
Springfield, IL 62704  
217-299-8484

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PIASA MOTOR FUELS, INC.,	)	
Petitioner,	)	
	)	
v.	)	PCB 2018-054
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

STATE OF ILLINOIS        )  
                                  ) ss.  
COUNTY OF SANGAMON )

**AFFIDAVIT OF PATRICK D. SHAW  
VERIFYING ATTORNEY FEES**

Affiant, Patrick D. Shaw, being first duly sworn, states as follows:

1. The statements made herein are based upon my personal knowledge, and I am competent to testify hereto.
2. I am an attorney duly licensed to practice law in the State of Illinois; and I am the attorney of record for Petitioner in the case Entitled Piasa Motor Fuels v. IEPA, PCB 18-054.
3. Attached hereto as Exhibit A is a printouts from my bookkeeping software detailing legal defense costs incurred in this matter. At all times relevant hereto my hourly rate has been \$200 per hour, which is the regular and ordinary billing rate charged all of my clients. I am generally familiar with the hourly rates of environmental attorneys practicing in Springfield, Illinois and before the Board, and believe this rate to be comparable, if not less, than other such attorneys.
4. The legal work involved in this appeal was customary to other appeals. In reviewing the invoices, however, I discovered that I did not bill for the initial draft of the petition


for review, so that the first billing entry describes revising and filing the petition after client review. Since the initial draft work was never billed, it is not a subject of this motion, but this explanation is offered to avoid any confusion.

5. Exhibit A identifies the legal work performed and the attorney's fees incurred in this matter. It reveals the date the work was performed, the description of the work performed, the amount of time spent, and the total fees incurred. Filing fees, postage and photocopying charges are also identified.

6. The legal defense costs incurred in seeking payment for corrective action herein total \$11,677.40, consisting of \$11,600.00 in attorney-time, and \$77.40 in costs.

FURTHER AFFIANT SAYETH NOT.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
Patrick D. Shaw

Law Office of Patrick D. Shaw  
 80 Bellerive Road  
 Springfield, IL 62704

Invoice submitted to:  
 CSD Environmental Services  
 2220 Yale Blvd.  
 Springfield IL 62703

May 20, 2020

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
1/2/2018 Receive & review e-mail from client; revise and file Petition for Review Piasa	1.50 200.00/hr	300.00
1/3/2018 E-mail Petition for Review with comments to client Piasa	0.10 200.00/hr	20.00
1/11/2018 Receive & review Board opinion accepting appeal Piasa	0.10 200.00/hr	20.00
11/14/2018 Telephone status conf.; request record be filed Piasa	0.10 200.00/hr	20.00
1/14/2019 Tel Jarvis re status of admin. record Piasa	0.10 200.00/hr	20.00
4/16/2019 Tel. conf. w/ Agency attorney re status of record Piasa	0.10 200.00/hr	20.00
4/23/2019 E-mail request for record to Jarvis Piasa	0.10 200.00/hr	20.00
4/26/2019 Receive response from Jarvis Piasa	0.10 200.00/hr	NO CHARGE
5/16/2019 Receive e-mail with provisional record; e-mail to Agency and to client; receive e-mail from client Piasa	0.30 200.00/hr	60.00
5/28/2019 Receive & review Certificate of Service Piasa	0.20 200.00/hr	40.00



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	<u>Hrs/Rate</u>	<u>Amount</u>
5/31/2019 E-mail to client re status of appeal and certificate filed by Agency Piasa	0.10 200.00/hr	20.00
9/16/2019 Review record and begin drafting statement of facts for motion Piasa	5.50 200.00/hr	1,100.00
10/7/2019 Draft motion for summary judgment Piasa	4.50 200.00/hr	900.00
10/9/2019 Draft motion for summary judgment Piasa	3.60 200.00/hr	720.00
Draft motion for summary judgment Piasa	1.90 200.00/hr	380.00
10/21/2019 Draft motion for summary judgment Piasa	3.30 200.00/hr	660.00
10/28/2019 Draft motion for summary judgment Piasa	1.00 200.00/hr	NO CHARGE
10/30/2019 Draft motion for summary judgment Piasa	2.00 200.00/hr	NO CHARGE
11/12/2019 Draft motion for summary judgment Piasa	4.00 200.00/hr	800.00
11/13/2019 Draft motion for summary judgment; e-mail client question regarding record; review e-mail responses Piasa	4.00 200.00/hr	800.00
11/15/2019 Revise and forward draft motion for summary judgment to client for review; tel conf. w/ client Piasa	2.50 200.00/hr	500.00
11/18/2019 Revise and file motion for summary judgment; status conf. w/ Hrg Officer and IEPA attorney; receive and review Hrg Officer e-mail and order Piasa	0.90 200.00/hr	180.00
11/20/2019 E-mail motion to client w/ upcoming schedule Piasa	0.10 200.00/hr	20.00
12/4/2019 Receive & review motion to dismiss appeal; e-mail w/ comments to client Piasa	0.60 200.00/hr	120.00
12/5/2019 Receive & response from client; e-mail reply Piasa	0.40 200.00/hr	80.00

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	<u>Hrs/Rate</u>	<u>Amount</u>
12/9/2019 Receive & review cross-motion for summary judgment from IEPA Piasa	0.50 200.00/hr	100.00
12/16/2019 Research and draft response to motion to dismiss Piasa	5.00 200.00/hr	1,000.00
12/17/2019 Revise and file response to motion to dismiss Piasa	4.50 200.00/hr	900.00
12/19/2019 E-mail response to motion to dismiss to client w/ comments; 2nd e-mail to client w/ copy of Agency's cross-motion for summary judgment; review reply Piasa	0.70 200.00/hr	140.00
12/23/2019 Draft and file response in opposition to IEPA's Cross-Motion for Summary Judgment; e-mail copy to client w/ comments Piasa	6.90 200.00/hr	1,380.00
4/16/2020 Receive & review e-mail from client re Board meeting; e-mail reply Piasa	0.10 200.00/hr	20.00
4/17/2020 Receive & review Board order; e-mail to client w/ comment; e-mail correspondence w/ client Piasa	1.00 200.00/hr	200.00
4/21/2020 E-mail correspondence w/ client about options Piasa	0.70 200.00/hr	140.00
5/18/2020 Draft attorney fee petition Piasa	3.60 200.00/hr	720.00
5/19/2020 Revise motion and e-mail to client for review Piasa	1.00 200.00/hr	200.00
For professional services rendered	<u>61.10</u>	<u>\$11,600.00</u>
Additional Charges :		
1/2/2018 Copying cost for January 2, 2018 Photocopies		2.40

CSD Environmental Services

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Amount

1/2/2018 Pollution Control Board Filing Fee (check not received; recent 1/22/2018)  
Filing Fee

75.00

Total additional charges

\$77.40